

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SCANSOFT, INC.

Plaintiff,

V.

ART ADVANCED RECOGNITION
TECHNOLOGIES, INC.

Defendant.

Civil Action No. 04-10840 PBS

**SCANSOFT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF SCANSOFT'S
CROSS-MOTION FOR ENTRY OF PROTECTIVE (CONFIDENTIALITY) ORDER**

Plaintiff, ScanSoft, Inc. (“ScanSoft”), submits this Supplemental Memorandum in Support of ScanSoft’s Cross-Motion for Entry of a Protective (Confidentiality) Order. Disregarding the Court’s clear order (Docket # 48) denying ART’s Motion for a Protective (Confidentiality) Order and directing the parties to submit a stipulation and protective order in accord with the Court’s decision on that motion, ART continues to refuse to agree to a Protective Order that allows ScanSoft’s in-house counsel access to confidential materials. As such, ScanSoft respectfully requests that this Court resolve this issue and enter the proposed Protective Order, attached as Exhibit A to ScanSoft’s pending Cross-motion for Entry of Protective (Confidentiality) Order (Docket # 40).

As a basis for its latest refusal to stipulate to a protective order, ART now insists that ScanSoft's in-house counsel, other than John O'Toole, should be prohibited from having access to information designated "Highly Confidential." Though ART has never raised this issue previously, in an effort to address ART's concerns, ScanSoft explicitly represented to ART that

ScanSoft's other in-house counsel, numbering six (6) individuals, are all similarly situated to John O'Toole with respect to their lack of involvement in competitive decision-making.¹ In other words, none of ScanSoft's in-house counsel is involved in making competitive business decisions resolving matters of competitive marketing strategy or product development. As this Court stated in its November 4, 2004 Order, "[w]hether in-house counsel should have access to an opposing party's confidential information appears to turn on whether the in-house counsel is involved in 'competitive decisionmaking' for its company." *ScanSoft v. ART Advanced Recognition Technologies*, No. 04-10840, slip op. at 3 (D. Mass. Nov. 4, 2004) (Alexander, M.J.); *see also, e.g., U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 (Fed. Cir. 1984). Yet, even in the face of ScanSoft's representation that, like Mr. O'Toole, none of ScanSoft's in-house counsel is involved in competitive decision-making, ART refuses to enter into a protective order that does not limit access to "Highly Confidential" information to Mr. O'Toole. There is no basis for ART's obstinacy, and there appears no way to avoid burdening this Court with this issue yet again.

WHEREFORE, ScanSoft respectfully requests that this Court grant ScanSoft's pending cross-motion for a Protective (Confidentiality) Order, enter an Order as proposed by ScanSoft and attached to that cross-motion as Exhibit A, and award ScanSoft its fees incurred as a result of this wasteful three-month effort to negotiate a simple protective order.

¹ Although Jo-Anne Sinclair, ScanSoft's General Counsel and Vice President, is a corporate officer, ScanSoft informed ART that her role at ScanSoft is that of a legal tactician and a coordinator of legal services and that Ms. Sinclair is not involved in "competitive decision-making."

Dated: November 10, 2004

SCANSOFT, INC.

By its attorneys,

/s/ Jack C. Schecter

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